

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

MYLES L. TOBIN
(312) 252-1502
mtobin@fletcher-sippel.com

December 28, 2004

ORIGINAL

212884

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

FILED
DEC 29 2004



Re: **Finance Docket No. 34646 (Sub-No. 1)**
D&I Railroad Company – Trackage Rights
Exemption – Sioux Valley Regional Railroad Authority

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated December 27, 2004. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

EXEMPTED
Office of Proceedings

DEC 29 2004

Part of
Public Record

Myles L. Tobin
Myles L. Tobin

MLT: arw

Enclosures

cc: Adrian L. Steel, Jr.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34646 (SUB-NO. 1)

D&I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

D&I Railroad Company ("D&I"), a common carrier by rail, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of overhead trackage rights over a line of railroad owned by the State of South Dakota between Elk Point, South Dakota (also known as East Wye Jct.) and Sioux City, Iowa (the "Elk Point-Sioux City Line").

The trackage rights acquired in connection with this Notice encompass a portion of the line of railroad which is the subject of the Notice of Exemption filed in Finance Docket No. 34645, The Burlington Northern and Santa Fe Railway Company – Acquisition and Operation Exemption – State of South Dakota.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), D&I submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

D&I is a Class III common carrier by rail which operates a rail line from Canton to Elk Point, South Dakota and Beresford to Hawarden, South Dakota pursuant to a sublease with the Sioux Valley Regional Railroad Authority. Sioux Valley, in turn, leases the Canton-Elk Point and Beresford Hawarden Lines from its owner, the State of South Dakota.

The State of South Dakota owns various rail lines in the state which are either leased to regional railroad authorities for operation by third-party rail carriers or, alternatively, are directly operated by third-party rail carriers on behalf of the State. The Elk Point-Sioux City Line is operated on behalf of the State by The Burlington Northern and Santa Fe Railway Company ("BNSF"), pursuant to an Operating Agreement dated July 10, 1986. Under the Operating Agreement the State retains ownership of Elk Point-Sioux City Line and administrative and management responsibility for the line, and has the right to grant trackage rights on the line subject to certain BNSF consent.

Although the State has the right to grant trackage rights to Sioux Valley for operations by D&I, BNSF has not consented to the grant of those rights, and the failure to provide this consent is the subject of litigation between the State and BNSF in The Burlington Northern and Santa Fe Railway Company v. State of South Dakota, Case No. 04-470 (S.D. 6th Circuit). D&I recognizes that BNSF consent may have to be obtained (either voluntarily or through litigation) before its third-party trackage rights operations can commence on the Elk Point-Sioux City Line. Nevertheless, inasmuch as the Board's authority for this Notice of Exemption is permissive in nature, the filing of this Notice is appropriate here as a prelude to obtaining any necessary consent.

Pursuant to an agreement between the State of South Dakota and Sioux Valley, as detailed in the related filing in Finance Docket No. 34646, the State is granting Sioux Valley overhead trackage rights from milepost 533.4 near Elk Point, South Dakota (also known as milepost 0.0 at East Wye Jct.) to milepost 511.90 in Sioux City, Iowa, including such yard tracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable and necessary to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City.

The State's agreement with Sioux Valley recognizes that Sioux Valley will utilize a third-party carrier to operate the trackage rights, in much the same fashion as D&I operates Sioux Valley's line between Canton-Elk Point and Beresford-Hawarden. Pursuant to the Notice of Exemption herein, Sioux Valley will utilize D&I to operate the trackage rights on the Elk Point-Sioux City Line. Pursuant to a Trackage Rights Agreement between Sioux Valley and D&I, D&I will operate on behalf of Sioux Valley in overhead trackage rights service from milepost 533.4 near Elk Point, South Dakota to milepost 511.90 in Sioux City, Iowa, including operations over such yardtracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable and necessary to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City.

The total distance of the Elk Point-Sioux City Line is 21.5 miles.

The full name and address of the applicant carrier herein is as follows:

D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117
(605) 334-5000

Any questions concerning this Notice should be sent to D&I's representative at the following address:

Jack Parliament
President
D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117
(605) 334-5000

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

D&I intends to consummate the proposed trackage rights transaction on or after January 5, 2005.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will allow Sioux Valley and D&I to effectively and efficiently interchange rail traffic from the Canton-Elk Point and Beresford-Hawarden Lines to BNSF, Union Pacific, and Canadian National.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

D&I owns or operates over rail property in the States of South Dakota and Iowa.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail lines over which D&I proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the draft Trackage Rights Agreement, designated as Exhibit 2, is attached hereto. A copy of the signed version of the Trackage Rights Agreement will be filed with the Board within 10 days of execution, pursuant to 49 C.F.R. § 1180.6(a)(7)(i).

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions are applicable to this transaction.

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34646 (SUB-NO. 1)

D&I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY

RECEIVED
Office of Proceedings

DEC 30 2004

Dept of
Public Record

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

RECEIVED

DEC 30 2004

Transit

Jack Parliament
President
D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117
(605) 334-5000


FOR D&I RAILROAD COMPANY

Dated: December 27, 2004

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by D&I is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights by D&I also is exempt from historic preservation reporting requirements.

Respectfully submitted,

By: 

Jack Parliament

President

D&I Railroad Company

P.O. Box 5829

Sioux Falls, South Dakota 57117

(605) 334-5000

FOR D&I RAILROAD COMPANY

Dated: December ~~21~~²⁴ 2004

EXHIBIT 1

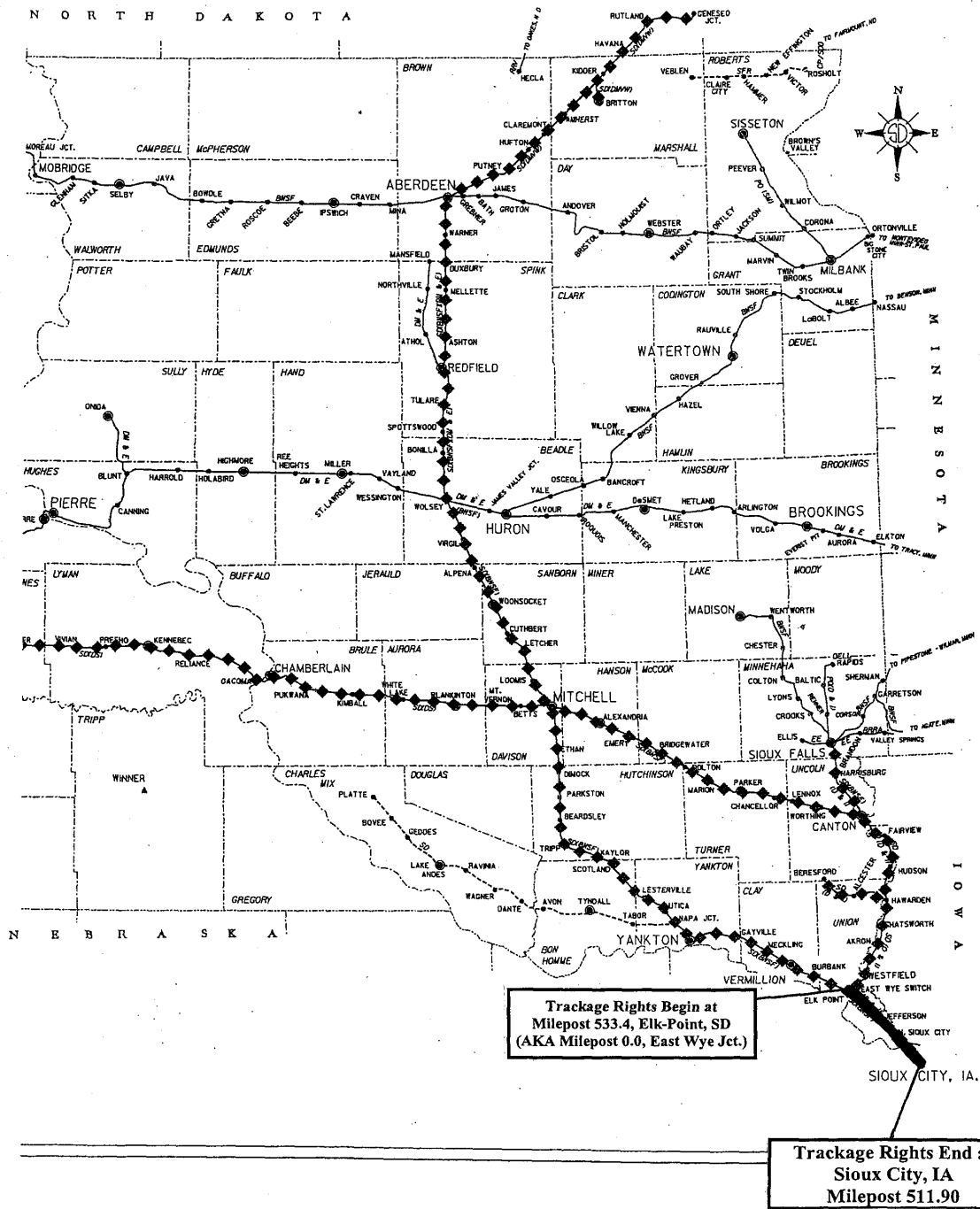


EXHIBIT 2

**TRACKAGE RIGHTS AGREEMENT BETWEEN THE
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY
AND
D&I RAILROAD COMPANY**

THIS TRACKAGE RIGHTS AGREEMENT, made and entered into this __ day of December, 2004, by and between Sioux Valley Regional Railroad Authority, hereinafter referred to as "Authority", and D&I Railroad Company, hereinafter referred to as "D&I".

WITNESSETH:

WHEREAS, the Authority has leased from the State of South Dakota ("State") certain rail lines between Beresford and Hawarden, and Canton and Elk Point, South Dakota, and between Elk Point, South Dakota and Sioux City, Iowa, and has been granted certain operating rights on State owned rail lines between Elk Point, South Dakota and Sioux City, Iowa; and

WHEREAS, the Authority and D&I desire that D&I operate the overhead trackage rights on the Rail Facilities described in Paragraph 1 below on behalf of Authority, in common with the State's operator of said Rail Facilities, The Burlington Northern and Santa Fe Railway Company ("BNSF");

NOW, THEREFORE, Authority and D&I do hereby mutually agree as follows:

1. Facility Description. The "Rail Facilities" for which the rights in this agreement are granted extend from milepost 533.4 (also known as milepost 0.0 near East Wye Jct.) near Elk Point, South Dakota to milepost 511.90 in Sioux City, Iowa, including such yardtracks, sidetracks, and connecting tracks as are reasonable and necessary to interchange railcars with BNSF, the Union Pacific Railroad Company ("UP"), and the Canadian National Railway Company ("CN") at Sioux City.

It is understood and agreed that the Rail Facilities are in an "as is" condition. The Authority shall have no responsibility to make any improvements, modification, rehabilitation, maintenance or other change to the Rail Facilities for the purpose of this Agreement.

2. Operating Rights. Subject to the terms and conditions, herein contained, the Authority grants to D&I the non-exclusive right to operate, in overhead freight service only, its trains, locomotives, cars and equipment with its own crews over the Rail Facilities. D&I shall not perform any local freight service whatsoever on any point located on the Rail Facilities.

D&I's use of the Rail Facilities shall be in common with BNSF and any other user of the Rail Facilities designated by the Authority and the State. D&I shall not have any right to grant other persons rights of any nature in the Rail Facilities.

Except as may otherwise be provided by this Agreement, D&I shall not use any part of the Rail Facilities for the purpose of storage or servicing of cars or equipment.

D&I shall have the right to operate in either direction over the Rail Facilities.

D&I shall not permit or admit any third-party to use of all or any portion of the Rail Facilities, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives or cars over or upon the rail facilities, or any portion thereof, the trains, locomotives or cars of any such third-party which in the normal course of business would not be considered as the trains, locomotives or cars of D&I; provided, however, that the foregoing shall not prevent D&I, pursuant to a run-through agreement with any railroad, from using the locomotives of another railroad as its own under this Agreement.

D&I shall have the right, in conjunction with Authority and the State, to construct, as necessary, switches and connecting tracks on the Rail Facilities at Sioux City, Iowa which are sufficient to facilitate the interchange of 110-car trains between D&I and BNSF, the UP and the CN at Sioux City.

3. Government Approval. D&I shall prepare and file such documents as may be required to secure operational approval from the Surface Transportation Board ("STB") for operation of the Rail Facilities. D&I shall permit the Authority to review prior to filing all documents proposed by D&I to be filed with the STB or any court to secure legal approval for operating approval.
4. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State of South Dakota shall retain exclusive control of the management of the Rail Facilities, subject to that certain Operating Agreement, dated July 10, 1986, between the State and BNSF, as amended.
5. Payment. D&I hereby agrees to make annual payments to the Authority based on a percentage of the gross freight revenues earned from traffic moved by D&I over the Rail Facilities, in accordance with the following percentages:

<u>For That Portion of Gross Freight Revenue:</u>	<u>Percentage Payment to the Authority:</u>
a. \$36 million and under	1%
b. Between \$36 million and \$45 million	5%
c. Between \$45 and \$55 million	6%
d. In excess of \$55 million	7%

D&I's Trackage Rights Payment to the Authority shall be reduced by the lease payment (1% of gross revenues) paid to the Authority by D&I for cars which move over both (1) the Rail Facilities and (2) the Beresford-Hawarden and/or Canton-Elk Point trackage leased by D&I.

A portion of the funds payable to the Authority by D&I shall be allocated and paid to BNSF for maintenance of the Rail Facilities. In the event D&I's movement of loaded cars over the Rail Facilities in a calendar year exceeds 11,800 loaded cars, D&I shall pay to BNSF 30 cents per loaded car mile for each loaded car moved via the Rail Facilities that is interchanged to/from either the UP or the CN at Sioux City, Iowa; provided, however, no per mile charge shall be paid to the extent that the loaded cars moved by D&I fall below the 11,800 car threshold. (For example, assume 11,900 loaded cars move via the Rail Facilities in a calendar year; further assume that 200 of those cars are interchanged between D&I and UP or CN; the per mile allocation shall be made for the movement of 100 cars).

70% of this BNSF per car mile maintenance allocation shall be subject to annual increase or decrease commencing on January 1, 2006, and January 1 of each year thereafter, based on the relationship of the Association of American Railroads (or successor organization) indexes of railroad material prices and wage rates for railroads of Class 1, Western District (material prices, wage rates and supplements combined, excluding fuel) hereinafter called "AAR Indexes" for each preceding year (2004 = 100). In the event the maintenance payment to BNSF equals or exceeds the amount that would be otherwise due and payable to the Authority in any year pursuant to this Agreement, no additional sums shall be payable to the Authority for that year.

Further, the Authority and D&I agree that either party reserves the right to renegotiate the payments under this trackage rights agreement on or before the annual anniversary date of this Agreement of each year that this Agreement is in effect by giving the other notice, in writing, at least thirty (30) days prior to the annual anniversary date of any year that the notifying party intends to renegotiate the fee.

The payments made by D&I to the Authority herein shall be in addition to the \$0.03 surcharge payable by D&I to the Authority pursuant to the parties' Sublease Agreement. Nothing herein shall be construed as altering D&I's requirement to pay the aforesaid surcharge.

6. Payment of Bills, Records Retention and Audit. D&I shall pay the Authority and BNSF all trackage rights and maintenance fees due under this Agreement within thirty (30) days of the end of each Agreement anniversary date.

D&I shall maintain records of operations and activities conducted pursuant to this Agreement (including but not limited to waybills generated by D&I, contracts and evidence of all freight revenues earned) for a period of at least four (4) years from the date of each applicable shipment.

Upon reasonable notice, D&I shall allow the State of South Dakota and the Authority or their authorized representatives to inspect the operations and activities of D&I pursuant to this Agreement, and to examine applicable records of D&I at its principal place of business during normal business hours for the purpose of verifying D&I's compliance with the terms and conditions of this Agreement, the amount of traffic moved by D&I over the Rail Facilities, and the gross freight revenues earned therefrom.

7. Liability of D&I. D&I shall indemnify, hold harmless, and protect the State of South Dakota and the Authority, their individual subdivisions and members, and their representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage or death received or sustained by any person, persons, or property, including State or Authority owned property, on account of any negligent act, omission, neglect or misconduct of the D&I's representatives, officers, employees or agents.
8. Insurance. D&I shall maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities in South Dakota, including but not limited to Public Liability, Personal Injury and Property Damage; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, the Authority and BNSF, with such limits (consistent with the terms set forth below), deductibles and exclusions as Authority may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$5 million per occurrence; and (ii) policy terms shall not exclude or limit coverage where activities or operations are on or near railroad tracks. The State, the Authority and BNSF shall be named as additional insureds on such liability insurance policy. Any coverage afforded to the State, the Authority and BNSF, as additional insureds, shall apply as primary insurance of the State, the Authority and BNSF, and shall not be deemed to be excess to any insurance issued in the name of the State, the Authority and BNSF. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

D&I shall furnish to the Authority and BNSF, an Accord Certificate of Insurance satisfactory to the Authority and BNSF, certifying the issuance to D&I of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the Authority and BNSF, shall be given not less than thirty (30) days' written notice by U.S. Certified Mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates.

D&I shall provide the Authority and BNSF, with evidence of the liability insurance coverage required by this Agreement before D&I operates along the Rail Facilities and D&I shall supply the Authority and BNSF, with copies of its insurance policies and any amendments, as soon as they are available, and with

evidence of continued insurance coverage on January 1 of each year. D&I's failure to provide such evidence, within seven (7) days of any request therefore, shall entitle the Authority to purchase such liability insurance, and invoice D&I for the cost of this insurance. D&I acknowledges that the purchase of insurance as required by this Paragraph shall not in any way limit the liability of D&I or any lessee or other operator to the State, Authority and BNSF, as set forth herein.

9. Personal Liability of Public Officials. In carrying out any of the provisions of this Trackage Rights Agreement, or in exercising any power or authority granted to D&I by or within the scope of this Trackage Rights Agreement, there shall be no liability upon any member of the Authority, or their authorized representatives, either personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
10. Laws to be Observed. D&I shall keep fully informed of all Federal and Authority laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performances of this Trackage Rights Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. D&I shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the Authority and the State and their representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
11. Assignment. D&I shall not assign its rights or delegate its duties under this Trackage Rights Agreement or any part thereof, without prior written consent of the Authority and the South Dakota Railroad Board or its designee.
12. Amendment. No term or provision of this Trackage Rights Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this Agreement may be made orally by representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
13. Complaint Resolution Procedure. In the event the South Dakota Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described herein, the South Dakota Railroad Board may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing shall be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Office of Air, Rail, and Transit, the Authority, and the D&I, or any other railroad conducting operations

on the facilities pursuant to a sublease agreement with the Authority. Any hearing held pursuant to this provision shall be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties shall be allowed to present oral and written information to the Board. After considering all information presented, the Board shall issue a written decision, which shall be binding on all parties to this agreement as if incorporated as a provision therein. The decision of the South Dakota Railroad Board shall be final and no party hereto shall be entitled to any right of appeal from its decision.

14. Term. This Agreement shall continue in full force and effect perpetually; provided, however, in the event D&I ceases to be the Authority's designated operator of the Canton-Elk Point and Beresford-Hawarden lines, this trackage rights agreement shall automatically terminate as to D&I and shall be transferred to Authority's new designated operator pursuant to Paragraph 20 hereof. Upon termination of this Agreement, the Rail Facilities shall be returned to the Authority in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement. In the event this Agreement is terminated for any reason whatsoever, D&I agrees to formally relinquish its right to the trackage rights in a proceeding before the Surface Transportation Board.
15. Termination for Fault. Should either the Authority or D&I substantially fail to perform its obligations under this Trackage Rights Agreement, and continue in such default for a period of ninety (90) days, the party not in default shall have the right, at its option, after first giving thirty (30) days written notice thereof by Certified Mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Trackage Rights Agreement. The liability provisions in Section 2 of Attachment 1 shall apply as between Authority's operator, on the one hand, and BNSF and the other carrier operating on the Rail Facilities, on the other hand.

It is further agreed that inadequate substandard performance by the D&I which persists in excess of one hundred twenty (120) days after the D&I has been made aware of the inadequate or substandard conduct, shall constitute a basis upon which the Authority may terminate this Trackage Rights Agreement under this paragraph.

16. BNSF Operations. D&I understands that BNSF currently operates on the Rail Facilities. Accordingly, D&I agrees that, as between itself and BNSF (and any other rail carrier operating on the Rail Facilities), D&I will abide by the provisions contained in Attachment No. 1 to this Agreement, and any other reasonable operating conditions required by BNSF.
17. Notice. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if delivered in person or by Certified or Registered Mail, return receipt requested, first class, postage prepaid to the person specified herein as entitled to receive

such notice, or to their duly authorized representatives unless notice of a change of address is given pursuant to the terms of this provision.

For the Authority: Chairman
Sioux Valley Regional Railroad Authority
P.O. Box 511
Beresford, South Dakota 57004

For the D&I: President
D&I Railroad Company
P.O. Box 5829
Sioux Falls, South Dakota 57117

18. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Trackage Rights Agreement, which shall remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional or otherwise enforceable was not originally a part thereof.
19. Entire Agreement. This Trackage Rights Agreement and the Attachment No. 1 attached hereto represent the entire agreement between the parties, and all previous communications, understandings or agreements between the parties are hereby abrogated and withdrawn except as provided herein.
20. Cessation of D&I as Designated Operator. In the event D&I ceases to be the Authority's designated operator of the Canton-Elk Point and Beresford-Hawarden Lines, this Agreement shall automatically be transferred to the new designated operator of those lines, and D&I shall cooperate in all respects in effectuating that transfer.

IN WITNESS WHEREOF, the parties hereto have caused this Trackage Rights Agreement to be executed and notarized by their duly authorized officers on the date and year first above written.

Sioux Valley Regional Railroad Authority

Russell Hazel, Chairman

D&I Railroad Company

Jack Parliament, President

ACKNOWLEDGED

STATE OF SOUTH DAKOTA) : SS
COUNTY OF LINCOLN)

On this ____ day of _____, 2004, before me, a Notary Public within and for said County and State, personally appeared Russell Hazel, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.

NOTARY PUBLIC
My Commission Expires: _____

ACKNOWLEDGED

STATE OF SOUTH DAKOTA) : SS
COUNTY OF MINNEHAHA)

On this __ day of _____, 2004, before me, a Notary Public within and for said County and State, personally appeared Jack Parliament, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.

NOTARY PUBLIC
My Commission Expires: _____

ATTACHMENT 1

Section 1. CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS AND OPERATIONS, CONTROL OF THE JOINT TRACKAGE.

1.1 The construction, maintenance, repair and renewal of the Rail Facilities shall be under the exclusive direction and control of BNSF. BNSF shall make any Additions to the Rail Facilities which BNSF deems necessary or desirable for the safe, efficient, and economical use of the Rail Facilities by the parties, and these shall progressively during construction become part of the Rail Facilities.

1.2 The operation of the Rail Facilities shall be under the exclusive direction and control of BNSF. BNSF shall have the unrestricted power to change the management of operations on and over the Rail Facilities as in its judgment may be necessary, expedient or proper for the operations thereof herein intended; provided that any such change shall not materially interfere with D&I's right to use the Rail Facilities. Prior to use for movements to or from Sioux City, D&I shall secure the necessary approval from BNSF's dispatchers located at Fort Worth, Texas.

1.3 BNSF shall employ all persons necessary to operate, maintain, repair and renew the Rail Facilities. BNSF shall be bound to use only reasonable and customary care, skill, and diligence in the operation, maintenance, repair, renewal or management of the Rail Facilities and D&I shall not, by reason of BNSF's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Rail Facilities, have or make against BNSF any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, except as otherwise provided in Section 2 hereof.

1.4 D&I, at its expense, shall install and maintain upon its trains, locomotives and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of BNSF, for the safe and efficient operation of trains upon the Rail Facilities.

1.5 If the use of the Rail Facilities shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, BNSF shall, with reasonable diligence, restore the line for the passage of trains of the parties hereto. During the period of any such interruption or delay BNSF may, if in its sole judgment it deems it operationally feasible or convenient, provide D&I with an alternate route and, in such event and during such period, the terms and conditions of this Agreement shall apply as though such alternate route was a part of the Rail Facilities. Neither party hereto shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

1.6 Each party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Rail Facilities.

1.7 The operation of D&I on or along the Rail Facilities shall at all times be in accordance with the rules, instructions and restrictions of BNSF but such rules, instructions and restrictions shall be reasonable, just, and fair between all parties using the Rail Facilities and shall not unjustly discriminate against any of them.

1.8 D&I shall be responsible for all mileage allowances and car hire charges accruing on cars in D&I's account on the Rail Facilities and D&I shall report and pay same directly to the owners of such cars.

1.9 With respect to operation of trains, locomotives and cars on and over the Rail Facilities, each party shall comply with all applicable laws, rules, regulations, and order promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge, and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge, and expense to the other party.

1.10 All employees of D&I engaged in or connected with the operations of D&I on or along the Rail Facilities shall be required to pass periodic examinations on the rules of BNSF, provided that with respect to such examinations, upon request of D&I, BNSF shall qualify one or more of D&I supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of D&I engaged in or connected with D&I operations on or along the Rail Facilities. Pending qualification of train and engine crews of D&I, BNSF shall furnish a pilot or pilots, at the expense of D&I, as deemed necessary by BNSF to assist in operating trains of D&I over the Rail Facilities.

1.11 If any employee of D&I shall neglect, refuse or fail to abide by BNSF's rules, instructions or restrictions governing the operation on or along the Rail Facilities, BNSF shall, in writing, so notify D&I. BNSF shall have the right to require D&I to withhold any D&I employee from service on the Rail Facilities pending the result of formal investigation, which in BNSF's sole opinion shall have neglected, refused or failed to abide by BNSF's rules, instructions or restrictions governing operation on or along the Rail Facilities. Upon such notice presented in writing, BNSF and D&I shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigation to D&I employees shall be given by D&I's officers, and such investigation shall be conducted in accordance with the terms and conditions of D&I's disciplinary procedures and schedule agreements, if any, between D&I and its employees. If, in the judgment of BNSF, the result of such investigation warrants, such employee shall, upon written request by BNSF be restricted by D&I from operating on the Rail Facilities, and D&I shall release and indemnify BNSF from and against any and all claims and expenses because of such restriction.

1.12 If any cars, cabooses or locomotives of D&I are bad ordered enroute on the Rail Facilities and it is necessary that they be set out, such cars, cabooses or locomotives shall,

after being promptly repaired, be promptly picked up by D&I. Unless otherwise agreed, BNSF may upon request of D&I and at D&I's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. In the event BNSF shall perform any such repairs to freight cars in D&I's account, billing therefore shall be at rates prescribed in the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs and BNSF shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and BNSF shall prepare and submit billing directly to and collect from D&I for handling line responsibility items as described under said Interchange Rules. If BNSF shall perform repairs to D&I's equipment other than freight cars, BNSF shall prepare and submit billing directly to and collect from D&I as in this Agreement provided for.

Section 2. LIABILITY

2.1 For the purposes of this Section 2, the following definitions shall apply:

"Loss or Damage": Shall mean all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of the use of the Rail Facilities.

"Joint Employee": Shall mean any officer, agent, employee, or contractor while engaged in maintaining, repairing, renewing, removing, inspecting or operating Joint Property or in making Additions thereto, or in dispatching, giving orders for or directing the movement of trains, or performing other service, for the common benefit of the parties having the right to use the Rail Facilities.

"Joint Property": Shall mean the Rail Facilities and all trains, locomotives, cabooses, cars and equipment engaged in the maintenance, repair, renewal, removal, inspection or operation thereof for the common benefit of the parties having the right to use the Rail Facilities. Any equipment shall be deemed Joint Property while engaged in or incident to the performance of service, the cost of which is included in expense or Loss or Damage for which the parties having the right to use the Rail Facilities are jointly liable.

"Sole Employees" and "Sole Property": Shall mean employees, trains, locomotives, cabooses, cars and equipment while engaged or about to engage in switching or handling cars of one of the parties hereto, or in performing other services for the exclusive benefit of one of the parties hereto, shall, for the purpose of this section, be considered Sole Employees and Sole Property of such party. Pilots furnished by BNSF to assist in operating trains, locomotives, cabooses or cars of D&I as well as any other BNSF employees performing services for the exclusive benefit of D&I under the terms of this Agreement shall be considered Sole Employees of D&I.

2.2 If equipment of D&I shall become derailed or otherwise disabled upon the Rail Facilities, such that wrecking service is required to clear same, BNSF shall, unless otherwise agreed, arrange for such service. All employees of BNSF operating wrecker or work

trains or assigned thereto or any wrecking service contractor, while clearing wrecks or derailments or engaged in the repair and renewal of the Rail Facilities subsequent to any such D&I wreck or derailment and any machinery, equipment, tools or other property of BNSF while engaged in such service, or while en route to such assignment or while returning to the home terminal, incident to the performance of such works shall be deemed the sole employees and equipment of the party whose employees, cars, locomotives, cabooses or trains were, in the first instance, solely involved in the accident; or, in the case of collision, or other accident involving the employees, equipment and lading of both parties hereto such employees and equipment shall be apportioned as provided in Section 2.3. Said employees and equipment shall not be deemed to be the employees and equipment of D&I while en route from the Rail Facilities for the purpose of performing further services for BNSF or a third-party.

2.3 As between D&I, on the one hand, and BNSF or another rail carrier operating on the Rail Facilities, on the other hand, each party shall bear all Loss or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party, except when the acts or omissions of such party do not contribute to the Loss or Damage and it is due to acts or omissions of Sole Employees of another party or parties or defect in the Sole Property of another party (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), in which event it shall be borne by the party or equally by the parties so responsible. Loss or Damage to third-parties or to Joint Property or Joint Employees shall, if caused by the acts or omissions of Sole Employees of fewer than all of the parties (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), be borne by the party whose Sole Employee caused said Loss or Damage and if more than one party's Sole Employee (but fewer than all) caused said Loss or Damage, then equally by the parties whose Sole Employees caused such Loss or Damage. Such Loss or Damage not caused by acts or omissions of a Sole Employee or Employees shall, if the trains, locomotives, cabooses or cars of fewer than all of the parties are involved, be born by the party whose trains, locomotives, cabooses or cars are involved and if more than one, then equally by the parties whose trains, locomotives, cabooses or cars are involved. Such Loss or Damage cause by acts or omissions of Sole Employees of all of the parties or involving the trains, locomotives, cabooses or cars of all the parties (but not caused by acts or omissions of a Sole employee or employees), or involving only Joint Employees or Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about, shall be apportioned among all the parties on a Train Mileage Proportion basis for the month in which the incident occurred except as otherwise provided for in this Section 2.3, as between the parties hereto.

2.4 It is understood and agreed that the number of vehicular crossings of the Rail Facilities presently exist, or may be constructed. D&I agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against BNSF and will hold BNSF harmless from any claim, demand or cause of action arising out of any crossing incident on the Rail Facilities in which the engines, cars or trains of D&I only are involved.

2.5 Detour of foreign line equipment of the Rail Facilities is at the sole discretion and permission of BNSF. All persons other than Joint Employees engaged in moving such

equipment shall be considered the equipment and employees of the parties hereto under whose Standard Detour Agreement or other auspices such movement being made. Cars and engines of such foreign line detours shall be counted against BNSF when determining the Train Mileage Proportion.

Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 2.

2.6 Each party hereto shall pay all Loss and Damage for which such party shall be liable under the provisions of this Section 2, and shall indemnify and save harmless the other party against such Loss and Damage, including any such damages awarded in any court action. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 2, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

In case a suit shall be commenced against either party hereto for or on account of Loss or Damage for which the other party hereto is solely or jointly liable under the provisions of this Section 2, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit.

No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

EXHIBIT 3
CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34646 (Sub-No. 1)

D&I RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
STATE OF SOUTH DAKOTA AND
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY

The State of South Dakota and the Sioux Valley Regional Railroad Authority have agreed to grant overhead trackage rights to D&I Railroad Company over a line of railroad of the State of South Dakota between milepost 533.4 near Elk Point, South Dakota (also known as milepost 0.0 at East Wye Jct.) and milepost 511.9 in Sioux City, Iowa a distance of approximately 21.5 miles. The trackage rights will include such yard tracks, side tracks and connecting tracks as are reasonable and necessary to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The trackage rights will be effective on January 5, 2005.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____

By the Board

Vernon A. Williams

Secretary

VERIFICATION

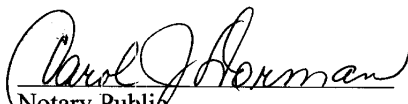
State of South Dakota)
) ss:
County of Minnehaha)

Jack Parliament, being duly sworn, deposes and says that he is President of D&I Railroad Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Jack Parliament

SUBSCRIBED AND SWORN TO
before me this 27th day
of December, 2004.



Notary Public
My Commission expires: 5-14-07

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 28, 2004 the foregoing **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)** with attached Exhibits was served upon counsel of record by the means indicated below, to wit:

Adrian L. Steel, Jr.
Mayer, Brown, Rowe & Maw, LLP
1909 K Street, N.W.
Washington, DC 20006-1101
(202) 263-3237

Via Federal Express

Dated: December 28, 2004

By:


Anthony R. Westenkirchner